NO. 80-215

Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1979

EDWIN W. EDWARDS, et al.,
Appellants,

versus

SERVICE MACHINE & SHIPBUILDING CORPORATION, INC., et al.,
Appellees.

APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JURISDICTIONAL STATEMENT AND APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

CIVIL ACTION NO 79-1520

SERVICE MACHINE & SHIPBUILDERS CORP., ET AL,
Plaintiffs

versus

EDWIN EDWARDS, ET AL,
Defendants

APPEARANCE

I, Bernard E. Boudreaux, Jr. certify that I am a member of the bar of the United States Supreme Court, and that I am counsel of record in the above captioned matter.

Franklin, Louisiana, August 6, 1980.

/S/ Bernard E. Boudreaux, Jr.
BERNARD E. BOUDREAUX, JR.

QUESTIONS PRESENTED

1. Is the commerce clause an appropriate ground for invalidating a local ordinance requiring the registration of workers entering the locality or changing jobs within that locality where the ordinance constitutes an attempt to deter and detect crime and does not seek to erect barriers to interstate trade?

2. Did the lower court err in subjecting the ordinance to commerce clause analysis instead of scrutinizing the ordinance under right to travel, equal protection, and Right to Privacy standards?

3. Has the lower court properly applied applicable commerce clause standards if it fails to consider the economic effects of the ordinance's interference with interstate trade and to relate both the local ordinance and the alternative means for accomplishing the same local purpose to their economic effect on interstate commerce?

LIST OF PARTIES

1. The following defendants-appellants:

Edwin W. Edwards, Governor of the State of Louisiana

William J. Guste, Jr., Attorney General of the State of Louisiana

Parish of St. Mary, Louisiana

The Police Jury of St. Mary Parish and each of its individual members:

Billy Butler

Matilda Aloisio

Lee Champagne

Joseph Davis, Jr.

Loylis Duhon

Albert Foulcard

Everett Fouquier

Wilson Gautreaux

Gregory Hamer

Emory Jennings

A. J. LeBourgeois

Lawrence Michel

Lige Robinson

J. Paul Russo

Chester Baudoin, Sheriff of St. Mary Parish

Robert Stoute, St. Mary Parish Identification Officer

2. The following plaintiffs-appellees:

Service Machine & Shipbuilding Corporation, Inc.

Southern Mutual Help Association, Inc.

Forest Reubin

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REFERENCE TO OFFICIAL REPORTS

The Fifth Circuit entered the judgment appealed from in:

> *Service Machine & Shipbuilding Corp v. Edwards,* No. 79-1520, 617 F.2d 70 (5th Cir. 1980).

That judgment was an appeal of the judgment entered by the Western District of Louisiana in:

> *Service Machine & Shipbuilding Corp v. Edwards,* Civ. A. No. 78-1556, 466 F. Supp 1200 (W.D. La. 1979).

JURISDICTIONAL GROUNDS

These proceedings arose upon a motion for preliminary and permanent injunction against enforcement of a state statute and local ordinance allegedly infringing upon rights guaranteed by the United States Constitution. The federal courts had jurisdiction by virtue of 28 *U.S.C.* § 1331 (1976).

The Court of Appeals for the Fifth Circuit entered a judgment on May 12, 1980, holding that St. Mary Parish, Louisiana, Ordinance No. 837 was unconstitutional as infringing upon the interstate commerce clause. A notice of appeal was filed with the Fifth Circuit on Aug. 6, 1980

This Court has jurisdiction to hear the appeal of this case by virtue of 28 *U.S.C.* § 1254(2) (1976), which grants jurisdiction to review decisions of the courts of appeals

> [b]y appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States . . . .

A municipal ordinance is a "State statute" for purposes of this provision. *New Orleans v. Dukes,* 427 U.S. 297, 301 (1976).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Art. 1, § 8, cl. 3 of the United States Constitution.

33 La. Rev. Stat. Ann. § 1236 (41) (West Supp. 1980).

St. Mary Parish, Louisiana Ordinance No. 837.

(The complete text of these provisions are included as Appendices F, E and D.)

STATEMENT OF THE CASE

Plaintiffs initially sought preliminary and permanent injunctive relief from the United States District Court for the Western District of Louisiana and a declaratory judgment that St. Mary Parish, Louisiana Ordinance No. 837, enacted pursuant to 33 *La. Rev. Stat. Ann.* § 1236(41) (West, Supp. 1980), violated their constitutional rights. Plaintiffs comprise workers and employers affected by that ordinance. Ordinance No. 837 generally requires the registration of itinerate laborers or

employees seeking employment in St. Mary Parish. Itinerate workers are defined as persons who travel into the Parish of St. Mary to seek employment or be employed therein or persons gainfully employed in the parish who seek to change employment. The plaintiffs challenged this ordinance alleging that it violated their rights under the United States Constitution on the following specific grounds: (1) their constitutional right to privacy; (2) their constitutional right to travel; (3) their constitutional rights under the privileges and immunities clause; (4) their constitutional rights under the equal protection clause; (5) their constitutional right to be free from unreasonable searches and seizures; (6) that the ordinance unduly interferes with interstate commerce; and (7) various other constitutional rights.

The district court upheld the ordinance against all constitutional attacks. The Court of Appeals for the Fifth Circuit granted an injunction pending appeal. The court of appeals considered the ordinance only in terms of the commerce clause and did not address the merits of the other grounds. The court of appeals held that the ordinance impermissibly burdened interstate commerce involving the movement of persons in view of the fact that less burdensome means of accomplishing the same local objective were available. The case was the remanded to the district court for a hearing to determine damages and to determine whether registration fees collected prior to the injunction granted by the court of appeals should be returned.

STATEMENT OF REASONS FOR PLENARY CONSIDERATION

The judgment of the Fifth Circuit Court of Appeals appealed from should be reviewed by this Court with respect to each question presented.

Question 1

1. Is the Commerce Clause an Appropriate Ground for Invalidating a Local Ordinance Requiring the Registration of Workers Entering the Locality or Changing Jobs Within that Locality Where the Ordinance Constitutes an Attempt To Deter and Detect Crime and Does Not Seek To Erect Barriers to Interstate Trade?

The decision of the Fifth Circuit Court of Appeals raises important questions as to the scope of the interstate commerce clause which require plenary consideration for their resolution. The lower court's decision erroneously applies the commerce clause to a situation not involving the free trade of goods or transportation of persons in interstate markets, but rather to an attempt to deter and detect criminal activity by requiring registration of some who migrate into the locality. This is not the kind of action with which the commerce clause is concerned. The parish has not erected a burden which the commerce clause was intended to make suspect.

The inherent limitation of the scope of the interstate commerce clause is illustrated in *Huges v. Alexandria Scrap*

Corp., 426 U.S. 794 (1976). The true purpose of this clause was discussed in the following manner:

> The Clause was designed in part to prevent trade barriers that had undermined efforts of the fledgling States to form a cohesive whole following their victory in the Revolution. This aspect of the Clause's purpose was eloquently expressed by Mr. Justice Jackson:
>
> "Our system, fostered by the Commerce Clause, is that every farmer and every craftsman shall be encouraged to produce by the certainty that he will have free access to every market in the Nation, that no home embargoes will withhold his exports, and no foreign state will by customs duties or regualtions exclude them. Likewise, every consumer may look to the free competition from every producing area in the Nation to protect him from exploitation by any. Such was the vision of the Founders; such has been the doctrine of this Court which has given it reality . . . ."
>
> *Hood & Sons v. Du Mond, supra*, 336 U.S., at 539, 69 S.Ct., at 665.

426 U.S. at 807-08 (footnotes omitted). As in *Alexandria Scrap*, the parish has not enacted a trade barrier of the type forbidden by the commerce clause and involved in previous cases.

In several recent decisions this Court has attempted to clarify the extent to which states and localities may conduct there own affairs and promote their own interests without raising impermissible trade barriers. *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970) (maintain reputation and quality of local argricultural products); *Great Atlantic & Pacific Tea Co.*,

Inc. v. Cottrell, 426 U.S. 366 (1976) (reciprocal acceptance of processed dairy products); *Hughes v. Alexandria Scrap Corp.,* 426 U.S. 794 (1976) (state bounty to assist junkyards in destroying junked automobiles); *Hunt v. Washington State Apple Advertising Commission,* 432 U.S. 333 (1977) (regulation of grading of agricultural products shipped into state); *Raymond Motor Transportation, Inc. v. Rice,* 434 U.S. 429 (1978) (regulation of length of tandum trailer trucks); *City of Philadelphia v. New Jersey,* 437 U.S. 617 (1978) (limitation on the importation of solid waste); *Hughes v. Oklahoma,* 441 U.S. 322 (1979) (prohibition of the interstate transportation of wild animals and fish for sale); and *Reeves v. Stake,* 48 USLW 4746 (U.S., June 19, 1980) (resident preference program for cement produce at state-owned plant). Each of these decisions involved either the interstate sale of goods or the interstate transportation of goods. There was no question about their direct relationship with the free trade of goods in interstate commerce, a policy which the commerce clause has historically sought to achieve. The decision of the Fifth Circuit in *Service Machine & Shipbuilding Corp. v. Edwards,* No. 79-1520, 617 F.2d 70 (5th Cir. 1980), however, clearly demonstrates that the rationale supporting these decisions is susceptible to misapplication in situations which do not involve the erection of barriers to interstate trade.

None of these recent decisions has attempted to apply this interstate commerce analysis to regulatory schemes

designed to deter and detect criminal activity. None of these recent decisions have attempted to apply the commerce clause to the regulation of local employment conditions. The potential for unwarranted extension of this interstate commerce analysis compels the conclusion that an authoritative determination by this Court of the issues raised by the Fifth Circuit's decision is necessary.

The interstate commerce analysis used by the lower court is premised on its conclusion that St. Mary Parish Ordinance No. 837 affects the movement of persons, which allegedly falls within the protection of the interstate commerce clause by virtue of *Edwards v. California,* 314 U.S. 160 (1941). That decision, however, should not be interpreted to prohibit all regualtions which might affect the decision of individuals to move to another locality. *Edwards* merely held that a state may not "isolate itself from difficulties common to all of them by restraining the transportation of persons and property across its borders." *Id.* at 173. The statute invalidated in *Edwards* was designed to protect California from the migration of poor people into it during the Depression.

The ordinance enacted by St. Mary Parish does not represent an attempt to isolate that locality from economic conditions prevailing throughout the nation. This ordinance constitutes merely an attempt to correct problems related only to local economic conditions. *Edwards* was not intended to be

so broad as to be used to invalidate a proper local legislative attempt to remedy local ills. In fact, the *Edwards* Court expressly acknowledged that the commerce clause did not preclude a state from exercising the police power in matters of local concern even though it may thereby affect interstate commerce.

The invalidation of the ordinance prohibiting the transportation of indigents into California in *Edwards* was consistent with precedent establishing that the interstate commerce power encompassed the transportation of persons as well as goods and services in interstate commerce. Undoubtedly, the *transportation* of persons does constitute interstate commerce. However, the factors influencing a person to *move* into a state are not intended to be regulated by the commerce clause. Any potential disincentive caused by the ordinance to the movement of persons into the parish differs significantly from the direct disincentive created by the statute in *Edwards* and the cases upon which it relied. The ordinance at issue simply does not implicate the commerce clause, as it does not affect "commerce."

The decision in *Edwards* has not been used by this Court to make the commerce clause the basis of an expanded concept involving the right of individuals to move from state to state. As Mr. Justice Douglas noted in his concurrence to that case, the right of individuals to move from state to state involves

different factors, arises from different reasons and serves other purposes than the need for preserving unburdened interstate trade in goods and services. Subsequent to *Edwards*, the right of individuals to travel from state to state has, of course, been expressly recognized. This express recognition was not attributed to the interstate commerce clause. The right to travel has been termed a fundamental constitutional right apart from any of the express provisions of the Constitution. Since the right to travel has now been recognized as a separate fundamental right, it is inappropriate to determine the scope of an individual's right to travel by reverting to an analysis based on the commerce clause. No decision of this Court supports the lower court's holding that the commerce clause applies to this case.

Question 2

2. Did the Lower Court Err in Subjecting the Ordinance to Commerce Clause Analysis Instead of Scrutinizing the Ordinance Under Right to Travel, Equal Protection and Right to Privacy Standards?

The right of the state to impose registration requirements on the movement of people into a locality should be tested by the standards developed in the right to travel cases. By utilizing the commerce clause the court of appeals not only avoided the correct analytical framework but implicitly expanded the right to travel far beyond the contours set by this Court.

The registration requirements of the local ordinance differ sharply from the durational residency requirements struck down in *Shapiro v. Thompson*, 394 U.S. 618 (1969), and *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974). Itinerants are neither irretrievably foreclosed from employment nor would they be forced to wait an excessively long period before obtaining it. *Sosna v. Iowa*, 419 U.S. 393 (1974). The impediment to travel involved herein is no more onerous than the residency requirement upheld in *Sosna*.

However, relevant considerations such as those pertinent to a right to travel analysis have been foreclosed by the court of appeals' reliance on the commerce clause. The lower court's decision has effectively expanded the right to travel beyond the boundaries established by this court under the guise of protecting the policies inherent in the commerce clause. The commerce clause was never intended to provide the constitutional foundation for the right to travel, and this Court should not permit its right to travel jurisprudence to be undermined by a constitutional provision designed to protect the transportation of goods in commerce.

Similarly, erroneous classification of this problem as one arising under the interstate commerce clause has permitted the court to ignore considerations relevant under the equal protection clause. Resort to an interstate commerce analysis allowed the Fifth Circuit to evaluate alternative means of promoting the

same local interests and to require the parish to justify the ordinance in terms of local benefits actually arising from the ordinance. *Hunt v. Washington State Apple Advertising Commission,* 432 U.S. 333 (1977); *Pike v.Bruce Church, Inc.,* 397 U.S. 137 (1970); and *Hughes v. Oklahoma,* 441 U.S. 322 (1979). Evaluation of the ordinance on equal protection grounds would only involve a determination of whether the ordinance constituted a rational exercise of the police power. *Dandridge v. Williams,* 397 U.S. 471 (1970). Use of an interstate commerce analysis in areas beyond the true scope of the interstate commerce clause to subject local regulations to stricter judicial scrutiny is improper.

Traditional right to privacy analysis would involve a similar determination. Under this analysis the ordinances identification requirement could reasonably be expected to achieve the articulated purposes of crime detection and deterrance. *Whalen v. Roe,* 429 U.S. 589 (1977). Similar experiments in such legislation have survived constitutional attacks and have demonstrated a proven effectiveness. (See *California v. Stuller,* 10 Cal.App.3d 582, 89 Cal.Rptr. 158(1970), *cert. denied,* 401 U.S. 977 (1970) and *Thom v. New York Stock Exchange,* 306 F.Supp. 1002 (S.D.N.Y. 1969), *aff'd. sub.nom, Miller v. New York Stock Exchange,* 425F2d 1074 (2dCir. 1970), *cert. denied,* 398 U.S. 905 (1970).

Question 3

3. Has the Lower Court Properly Applied Applicable Commerce Clause Standards If It Fails To Consider the Economic Effects of the Ordinance's Interference With Interstate Trade and To Relate Both the Local Ordinance and Alternative Means for Accomplishing the Same Local Purpose to Their Economic Effect on Interstate Commerce?

Even if the effects of the St. Mary Parish Ordinance No. 837 upon interstate commerce are a proper subject of consideration, the Fifth Circuit improperly applied appropriate interstate commerce standards to that ordinance. The individuals attacking this ordinance fall generally into two groups. Itinerate workers allege that the ordinance inhibits their movement and ability to find employment. Local employers allege that the ordinance increases their labor costs in relation to competitors in other localities.

The Fifth Circuit relied upon *Hughes v. Oklahoma*, 441 U.S. 322 (1979), for its statement of the contours of appropriate interstate commerce standards:

> Under that general rule we must inquire (1) whether the challenged statute regulates even-handedly with only "incidental" effects on interstate commerce, or discriminates against interstate commerce either on its face or in practical effect; (2) whether the statute serves a legitimate local purpose; and, if so, (3) whether alternative means could promote this local purpose as well without discriminating against interstate commerce. The burden to

> show discrimination rests on the party challenging the validity of the statute, but 'when discrimination against commerce . . . is demonstrated, the burden falls on the State to justify it both in terms of the local benefits flowing from the statute and the unavailability of nondiscriminatory alternatives adequate to preserve the local interests at stake.'

Id. at 336, quoting *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 336 (1977).

A determination that the effects of local regulation on interstate commerce are not "incidental" and that alternative means are available to accomplish the same local objectives involves the comparison of competing economic question. For example, the states economic interests in maintaining the quality of local agricultural products can easily be balanced against the injury inflicted upon individual producers who would be forced to construct shipping facilities within the state. *See Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970). Alternative means by which a state could maintain the quality of local products can be economically evaluated. This economic comparison of alternative means is clearly relevant to burdens upon interstate commerce. The Fifth Circuit has attempted no such economic evaluation of either the disincentives to interstate movement of itinerate workers or of the alternative means of deterring and detecting increased crime.

Although adopting the language of this Court's commerce clause analysis, the Fifth Circuit has not engaged in the same

substantive consideration of closely related economic questions posed by the earlier decisions. The allegations of the itinerate workers challenging this ordinance do not appear to be readily susceptible to this economic analysis. The claims of the employers are susceptible to an economic analysis. The Fifth Circuit concluded that the financial impact on employers was substantial. A locality may, however, require local businesses to bear their share of the costs of local government. *Department of Revenue v. Associations of Washington Stevedores Co.*, 435 U.S. 734 (1978). That is not the sort of burden which will interfere with interstate commerce. This ordinance does not seek to prefer local business at the expense of others. The alleged injury to local employers in fact has the exact opposite effect of those restrictions traditionally found disruptive of interstate commerce. Local employers are, if anything, penalized in relation to other competitors. This additional burden is, however, related only to local affairs and any "burden" upon interstate commerce is indeed "incidental."

APPENDIX A

SERVICE MACHINE & SHIPBUILDING CORP. et al.,
Plaintiffs-Appellants,

versus

EDWIN W. EDWARDS et al.,
Defendants-Appellees.

No. 79-1520.

United States Court of Appeals,
Fifth Circuit.

May 12, 1980.

Proceeding was instituted to declare invalid and enjoin enforcement of a Louisiana workers' registration ordinance. The United States District Court for the Western District of Louisiana, 466 F.Supp. 1200, W. Eugene Davis, J., upheld the constitutionality of the ordinance, and appeal was taken. The Court of Appeals, Tjoflat, Circuit Judge, held that even if facial discrimination was stricken from ordinance, which required employers to register nonresidents seeking their first employment, which required disclosures of personal information which were not utilized to facilitate offered justification of detection and deterrence of crime and which required ten dollar registration fee, such ordinance was violative of commerce clause, particularly in light of other nondiscriminatory alternatives.

Reversed and remanded.

1. Commerce

Affirmative grant to Congress of power to regulate interstate and foreign commerce necessarily imposes corresponding limitations on powers of states to regulate areas where Congress has assumed primary responsibility but does not preclude every state law that affects interstate commerce. U.S.C.A.Const. art. 1, § 8, cl. 3.

2. States

Congress has not preempted state and local laws in area of crime control.

3. Commerce

Movement of persons falls within protection of commerce clause. U.S.C.A.Const. art.1, § 8, cl. 3.

4. Commerce

A challenged law need not be a state statute to violate commerce clause; local ordinance can also create an unlawful infringement on interstate commerce. U.S.C.A.Const. art. 1, § 8, cl. 3.

5. Commerce

Under general rule, in determining validity of statute under commerce clause, court must inquire whether challenged statute regulates evenhandedly with only incidental effects on interstate commerce or discriminates against interstate commerce either on its face or in practical effect, and also must consider whether statute serves legitimate local purpose and, if so, whether alternative means could promote local purpose as well without discriminating against interstate commerce; burden to show discrimination rests on party challenging validity of statute but when discrimination against commerce is demonstrated, burden falls on state to justify it both in terms of local benefits flowing from statute and unavailability of nondiscriminatory alternatives adequate to preserve local interests at stake. U.S.C.A.Const. art. 1, § 8, cl. 3.

6. Commerce

Even if facial discrimination was stricken from Louisiana ordinance authorizing workers' registration system, which required employers to - register nonresidents seeking their first employment, which required disclosures of personal information which were not utilized to facilitate offered justification of detection and deterrence of crime and which required ten dollar registration fee,

such ordinance was violative of commerce clause, particularly in light of other nondiscriminatory alternatives. U.S.C.A.Const. art. 1, § 8, cl. 3.

Appeal from the United States District Court for the Western District of Louisiana.

Before TJOFLAT and VANCE, Circuit Judges, and ALLGOOD,* District Judge.

TJOFLAT, Circuit Judge:

This appeal calls into question the constitutionality of the St. Mary Parish, Louisiana worker registration ordinance. In the proceedings below, the district court upheld the ordinance and refused to enjoin the registration system the ordinance established. 466 F.Supp. 1200 (W.D.La.1979). A panel of this court granted an injunction pending appeal, requiring that all registration under the system cease, and this expedited appeal followed.

*District Judge of the Northern District of Alabama, sitting by designation.

I

St. Mary Parish has experienced rapid population growth as a result of the development of the offshore oil and gas industry, and large numbers of transient workers have been attracted to the area by the employment opportunities. The St. Mary Parish Police Jury believed that the transient laborers contributed significantly to the local crime rate. In an effort to alleviate the crime problem, the Parish Police Jury, pursuant to the authority granted by 33 La.Rev.Stat. Ann. § 1236(41) (West Supp.1980),[1] adopted Ordinance No. 837,[2] which established the worker registration system here under constitutional attack.

1. Section 1236(41) provides:

> The governing authority of the parishes of St. Mary, Cameron, Vermilion Iberia, Assumption, Terrebonne and Lafourche may adopt ordinances providing for a system of identification and registration of itinerant workers, prohibiting any employer from employing any itinerant worker who is not properly identified and registered, including penalties applicable to employers for violations of such ordinances.

2. Ordinance No. 837 provides:

> An Ordinance to require all persons, firms, corporations, institutions, and public bodies employing itinerant laborers in this Parish, to obtain identification information including picture and fingerprints of all laborers employed by them, to furnish application information, fingerprints, and pictures to the St. Mary Parish Police Jury for information purposes, and to provide penalties for violation of same.

The ordinance was designed to provide for the identification and registration of itinerant laborers seeking employment within St. Mary Parish. "Itinerant laborers" are defined as (1) those who travel into St. Mary Parish seeking employment and

SECTION 1: *DEFINITIONS:*

Employers as used herein shall mean all persons, firms corporations, labor contractors, institutions and public bodies in the Parish of St. Mary who employs the services of another and for whom employers work and receive wages or salaries.

Itinerant laborers or employees are any persons who travel into the Parish of St. Mary, after the effective date of this ordinance, to seek employment or to be employed in this Parish. Itinerant laborers are also persons gainfully employed in the Parish of St. Mary who seek to change employment after the effective date of this ordinance.

SECTION 2:

Except as provided in Section 3 hereof, all employers who employ itinerant laborers shall require, prior to employment, that such laborer complete an application-identification form to be furnished by the St. Mary Parish Police Jury, which shall include photograph and fingerprints of the laborer.

SECTION 3:

Employers shall issue to employees hired by them, an identification card, which shall contain the name, address and fingerprint of such employee, said identification cards to be furnished by the St. Mary Parish Police Jury. Once an employee has been issued an identification card in compliance with the foregoing, such employee need not reapply upon changing jobs; the presentation of this card to prospective employers shall constitute authority for employers to hire such employees without the necessity of completing the application-identification forms provided for in Section 2 hereof.

(2) those gainfully employed in the parish who seek to change employment. All employers of itinerant laborers are to have each of them, prior to employment, complete an application-identification form that requires the photograph and fingerprints of the laborer. The employer then *must* furnish this

SECTION 4:

Employers shall forward to the St. Mary Parish Police Jury, Courthouse, Franklin, Louisiana, all completed application cards, fingerprint cards, and pictures of employees, on a weekly basis, and shall indicate thereon which applicants were actually hired by the employer.

SECTION 5:

The St. Mary Parish Police Jury shall make available to the Sheriff of St. Mary Parish, all such identification forms, fingerprint cards, and pictures of employees for further identification.

SECTION 6:

It shall be unlawful for any person who has been issued an identification card, to transfer such card to another, or to falsify any of the information contained thereon or in the application therefor.

SECTION 7:

The Police Jury of St. Mary Parish, Louisiana shall employ persons to complete application forms, fingerprint cards, and issue identification cards to laborers. A fee of not more than $10.00 shall be charged for each application so completed. Nothing contained herein shall prevent employers from completing the applications and submitting same to the Police Jury as provided herein.

SECTION 8:

The Police Jury shall establish an office for the administration and enforcement of this ordinance, and may prescribe forms to be completed, identification cards to be issued and records to be maintained.

information to the Parish Police Jury. Any employer who violates the ordinance is subject to fine or imprisonment. The ordinance authorizes licensees to issue these application forms and identification cards for a fee not to exceed ten dollars. The evidence indicates that the ten dollar fee was universally charged by the licensees.

Service Machine & Shipbuilding Corporation is an employer subject to the ordinance, and Forest Rubin, another

SECTION 9:

Nothing contained herein shall be construed as a denial of employment by the Police Jury of St. Mary Parish, the Sheriff or other law enforcement agency of St. Mary Parish; nor shall any provision of this ordinance be construed as permission for an employer to deny employment to anyone because of race, sex, ancestry, religion or national origin.

SECTION 10:

Any person, firm, corporation, labor contractor, institution or public body violating the provisions of this Ordinance shall be guilty of a misdemeanor and upon conviction by a Court of competent jurisdiction shall be fined a minimum of $25.00 and a maximum of $100.00 or imprisonment at the discretion of the Court. Each separate violation of the provisions of this Ordinance shall constitute a separate offense subject to said penalties.

SECTION 11:

In case of any one or more of the provisions of this ordinance shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of said ordinance, but the same shall be construed and enforced as if such illegal or invalid provision had not been contained herein. Any constitutional or statutory provision enacted after the date of this ordinance which validates or makes legal any provision hereof shall be deemed to apply hereto.

appellant, is a potential employee within the parish. They contend in this appeal that the ordinance and the registration system impermissibly infringe on various constitutional rights: (1) the right to travel; (2) the right to work and change jobs; (3) the right of privacy; (4) the equal protection of the laws; (5) the due process of law; and (6) rights secured under the commerce clause. Because we hold that the St. Mary Parish Ordinance and worker registration system violate the commerce clause, we need not address the merits of the other grounds advanced by the appellants.

II

In dismissing the contention that the ordinance violates the commerce clause, U.S.Const. art. I, § 8, cl. 3, the district court first held that the ordinance did not discriminate between parish and nonparish job applicants, since most resident job applicants who traveled into the parish. The court recognized, however, that the ordinance affected interstate commerce insofar as it applied to those who traveled into the parish. Because the ordinance impaired interstate commerce, the court applied the test of *Southern Pacific Co. v. Arizona*, 325 U.S. 761, 65 S.Ct. 1515, 89 L.Ed. 1915 (1945), and determined that the infringement was rationally related to the legitimate parish interest in controlling crime, and that the minimal burden on interstate commerce was far outweighed by this legitimate interest. 466 F.Supp. at 1208. In light of

more recent Supreme Court pronouncements on the applicable standard for reviewing state or local laws that burden interstate commerce, we reverse.

[1,2] The commerce clause grants to Congress the power to regulate interstate and foreign commerce. This affirmative grant necessarily imposes corresponding limitations on the powers of states to regulate areas where Congress has assumed primary responsibility, *A & P Tea Co. v. Cottrell,* 424 U.S. 366, 370-71, 96 S.Ct. 923, 927, 47 L.Ed.2d 55 (1976), but does not preclude every state law that affects interstate commerce. *H.P. Hood & Sons, Inc. v. DuMond,* 336 U.S. 525, 531-32, 69 S.Ct. 657, 661-62,93 L.Ed. 865 (1949). "[I]n areas where activities of legitimate local concern overlap with the national interests expressed by the Commerce Clause-where local and national powers are concurrent-the Court in the absence of congressional guidance is called upon to make 'delicate adjustment of the conflicting state and federal claims' . . . . " *A & P Tea Co. v. Cottrell,* 424 U.S. at 371,96 S.Ct. at 928, quoting *H.P. Hood & Sons, Inc.,* 336 U.S. at 553, 69 S.Ct. at 679 (Black, J., dissenting). Congress has not preempted state and local laws in the area of crime control. Thus, this court must examine the challenged ordinance to determine whether the measures taken by St. Mary Parish run afoul of the commerce clause's "overriding requirement of a national 'common market.' " *Hunt v. Washington Apple Advertising Commission,* 432 U.S. 333, 350, 97 S.Ct. 2434, 2445, 53 L.Ed. 2d 383 (1977).

[3,4] The movement of persons falls within the protection of the commerce clause, *Edwards v. California*, 314 U.S. 160, 172, 62 S.Ct. 164, 166, 86 L.Ed. 119 (1941), so the ordinance must be subjected to scrutiny under the commerce clause. In addition, a challenged law need not be a state statute to violate the commerce clause. A local ordinance can also create an unlawful infringement on interstate commerce. *See Dean Milk Co. v. Madison*, 340 U.S. 349, 71 S.Ct. 295, 95 L.Ed. 329 (1951).

[5] The appropriate standard for assaying a local law affecting interstate commerce was most recently stated in *Hughes v. Oklahoma*, 441 U.S. 322, 99 S.Ct. 1727, 60 L.Ed. 250 (1979):

> Under that general rule we must inquire (1) whether the challenged statute regulates evenhandedly with only "incidental" effects on interstate commerce, or discriminates against interstate commerce either on its face or in practical effect; (2) whether the statute serves a legitimate local purpose; and, if so, (3) whether alternative means could promote this local purpose as well without discriminating against interstate commerce. The burden to show discrimination rests on the party challenging the validity of the statute, but "[w]hen discrimination against commerce . . . is demonstrated, the burden falls on the State to justify it both in terms of the local benefits flowing from the statute and the unavailability of nondiscriminatory alternatives adequate to preserve the local interests at stake." *Hunt v. Washington Apple Advertising Commission*, 432 U.S. 333, 353, 97 S.Ct. 2434, 2446, 53 L.Ed.2d 383 (1977).

441 U.S. at 336, 99 S.Ct. at 1736. *See Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142, 90 S.Ct. 844, 847, 25 L.Ed.2d 174 (1970).

[6] Our first task, then, is to determine whether the ordinance regulates evenhandedly, or discriminates against interstate commerce. The type of discrimination that has been the focus of the Supreme Court's analysis occurs when a state or local law distinguishes between commerce originating within a state and commerce orginating outside the state. Most often this discrimination takes the form of economic protectionism, and the Court has consistently held this type of parochial legislation constitutionally invalid. *See, e. g., City of Philadelphia v. New Jersey,* 437 U.S. 617, 98 S.Ct. 2531, 57 L.Ed.2d 475 (1978); *Toomer v. Witsell,* 334 U.S. 385, 68 S.Ct. 1156, 92 L.Ed. 1460 (1948); *Baldwin v. G.A.F. Seelig,* 294 U.S. 511, 55 S.Ct. 497, 79 L.Ed. 1032 (1935). The Court also has struck down state attempts to accord its own residents a preferred right of access over nonresidents to resources located within its borders. *See, e. g., Hughes v. Oklahoma,* 441 U.S. 322, 99 S.Ct. 1727, 60 L.Ed. 250; *Pennsylvania v. West Virginia,* 262 U.S. 553, 43 S.Ct. 658, 67 L.Ed. 1117 (1923). Prohibited discrimination has been found even when a statute on its face does not distinguish between in-state and out-of-state commerce, but in practical effect, nevertheless, favors resident over nonresident producers. *See Hunt v. Washington Apple Advertising Commission,* 432 U.S. 333, 97 S.Ct. 2434, 53 L.Ed. 383.

As the preceding cases indicate, the Supreme Court has found discrimination under laws that favor residents vis-a-vis nonresidents, where there is no reason, apart from origin, to treat them differently. Here, Ordinance No. 837 discriminates against interstate commerce. Although the ordinance at first glance appears to require registration of all seeking employment, both resident and nonresident, it does facially discriminate in favor of local residents in one important respect. The ordinance does not mandate that an employer require registration of resident job applicants seeking their first job, although an employer must require such registration of nonresidents seeking their first employment.

Since the ordinance discriminates against interstate commerce, the burden falls on the parish to justify the ordinance both in terms of local benefits arising from the ordinance and the unavailability of nondiscriminatory alternatives that would adequately preserve the local interests at stake. *Hughes v. Oklahoma,* 441 U.S. at 335, 99 S.Ct. at 1736. This burden can be very heavy at times, arising nearly to a per se invalidation where the local measure is motivated by economic protectionism. *See City of Philadelphia v. New Jersey,* 437 U.S. at 623, 98 S.Ct. at 2535. St. Mary Parish has advanced its interest in the deterrence and detection of crime as justification for the ordinance. This interest does not appear to be merely a guise for economic protectionism, so we do not consider a per se invalidation of the ordinance appropriate. Instead, because the

ordinance facially discriminates against interstate commerce, we must hold the parish to a high standard of justification for the ordinance. St. Mary Parish has not met that burden.

While the parish's interest in the deterrence and detection of crime is a legitimate local interest, an assertion of a permissible local interest is not a talisman. A court must look instead to the benefits that are claimed to flow from the challenged local law. *See Raymond Motor Transportation, Inc. v. Rice,* 434 U.S. 429, 98 S.Ct. 787, 791-92, 54 L.Ed.2d 664 (1978). Even laws purporting to protect the public health and safety have been found constitutionally infirm where the asserted benefits were found, upon close examination, to be tenuous. *See id.* at 442-445, 98 S.Ct. at 795-96 (highway safety regulations not justified); *Hunt v. Washington Apple Advertising Commission,* 432 U.S. at 353-54, 97 S.Ct. at 2446-47 (consumer protection not justified). *See also City of Philadelphia v. New Jersey,* 437 U.S. at 626, 98 S.Ct. at 2537 (environmental purposes insufficient to warrant discrimination against out-of-state waste). The parish's claim that the ordinance will facilitate the detection and deterrence of crime is greatly undermined by the testimony of the parish's own fingerprint expert, who testified that most of the information obtained through the registration system was of no use to him, and that he had never received any information from the registrations. Plaintiff's Exh. G (Deposition of J. Garlotte at 4-5). In addition, the parish has made no showing of the

unavailability of nondiscriminatory alternatives that would serve to protect the local interests in question. The testimony of one expert at trial indicated that persons between fifteen and nineteen commit a disproportionately large percentage of the crime. Record, vol. II, at 361. But under the ordinance's discriminatory registration scheme, local individuals that would most likely fall into this category would not be required to register, since many would be seeking their first jobs. It would appear that a nondiscriminatory registration scheme would *better* serve crime prevention and detection in the parish.

While Ordinance No. 837 in its present form is unconstitutional, it does contain a savings clause, providing for the enforcement of the other provisions of the ordinance in the event that any of its provisions is held invalid. *See note 2 supra*, section 11. To give effect to this savings clause, this court would need to read out the ordinance's facial discrimination against interstate commerce by making the registration applicable to all seeking employment in the parish. Even if this would preserve the constitutionality of the ordinance, the registration system here implemented pursuant to the ordinance cannot withstand commerce clause scrutiny.

> "[W]here [non-protectionist] legislative objectives are credibly advanced and there is no patent discrimination against interstate trade, the Court has adopted a much more flexible approach, the general contours of which were outlined in *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142, 90 S.Ct. 844, 847, 25 L.Ed.2d 174:

> Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. . . . If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities."

City of Philadelphia v. New Jersey, 437 U.S. at 624, 98 S.Ct. at 2535-36.

This standard is basically the same as the test stated by the court in *Hughes, see* slip op. at 5529, p. _____ *supra,* but gives more deference to the local interests since it assumes that the challenged law does not discriminate against interstate commerce. In applying this standard, a court must examine the benefits that supposedly result from the local law, and not rely merely on the assertion of an accepted local interest. *See* slip op. at 5530, p. _____ *supra.* The parish hoped that the ordinance would deter criminals from entering the parish as well as aid in their apprehension. These objectives then must be balanced against the burdens on interstate commerce, in light of whether the putative local benefits could be accomplished by less burdensome schemes. The registration system here creates many impediments to the free flow of commerce. First, the information required in the registration process goes far beyond

that explicitly authorized by the ordinance, revealing personal information that is unnecessary for normal police identification.[3] Plaintiff's Exh. G (Deposition of J. Garlotte at 4). That detailed personal information must be divulged is particularly intimidating to applicants who do not want to reveal such things as former incarceration or residence in a mental institution, covert cohabitation, illegitimacy, or race, and thereby may refrain from interstate movement. *See* Record, vol. II, at 353-55. In addition, the ten-dollar registration fee creates a definite burden on the movement of migrant labor, especially low-income agricultural workers traveling to harvest crops or to seek better employment. *Id.* at 434-444. The financial impact on employers who pay this fee for large numbers of employees is substantial. The burdens on interstate commerce are indeed weighty in relation to what some parish law enforcement officials conceded were the registration system's somewhat illusory benefits.

Moreover, this court's tolerance of the registration system's burden on interstate commerce dwindles in light of other alternatives open to the parish. It appears that the local

3. The identification form requested the applicant's name, nicknames, and aliases; social security number; driver's license number and issuing state; sex, race, height, weight, hair and eye colors; present address; home and business telephone numbers, former residences for the past five years; last place of employment; occupation; names and addresses of spouse, parents, brothers, and sisters; and voter registration. *See* 466 F.Supp. at 1211-12.

interest sought to be advanced by the registration scheme, that of crime control, could be advanced through more narrowly-drawn methods that have a much lesser impact on the free-flow of goods or services in interstate commerce. For example, the information required for the registration process could be more closely integrated with that used for law enforcement and less intrusive to those who must register. We therefore hold unconstitutional the St. Mary Parish registration scheme, even if the facial discrimination is stricken from its authorizing ordinance.

III

Appellants finally argue that the case should be remanded to the district court for a hearing to determine damages and to decide whether the registration fees that had been collected prior to the injunction granted by this court should be returned. Neither of these claims for relief was presented in the proceedings below since the district court considered only proof relevant to the plaintiffs' prayer for a declaratory decree and an injunction. Record, vol. I, at 147. Though plaintiffs' complaint made no specific request for the return of the registration fees, it did request monetary damages and "such other and further relief as the Court deems to be just and proper." *Id.* at 17. We therefore remand the case to the district court for a determination of further appropriate relief.

REVERSED and REMANDED.

APPENDIX B

A-19

SERVICE MACHINE & SHIPBUILDING CORP. et al.

versus

EDWIN W. EDWARDS et al.

Civ. A. No. 78-1556.

United States District Court,
W. D. Louisiana,
Lafayette Division.

Feb. 13, 1979.

Proceeding was instituted to declare invalid and enjoin enforcement of a workers' registration ordinance. The District Court, Davis, J., held that ordinance of St. Mary Parish Police Jury mandating disclosure of fingerprints, photographs, addresses for past five years, names and addresses of relatives, and other pertinent information was not unconstitutional as violative of right to privacy, right to travel, due process, equal protection, guarantees of Fourth and Fifth Amendment, as amounting to a burden on interstate commerce, or as representing an impermissible levy of duties on imports of exports.

Judgment for defendants.

1. Constitutional Law

Information required to be divulged by workers' registration ordinance of St. Mary Parish Police Jury, namely fingerprints, photographs, addresses for past five years, names and addresses of relatives, and other relevant information, was not the sensitive, personal type information entitled to protection as a privacy right under due process clause. U.S.C.A.Const. Amend. 4.

2. Counties

St. Mary Parish Police Jury properly exercised its discretion in exercise of its police power in enacting workers' registration ordinance mandating disclosure of fingerprints, photographs, addresses for past five years, names and addresses of relatives, and other relevant information were, under balancing test, potential for inconvenience and embarrassment to individual job applicant was minimal, interest of state and parish in controlling crime was compelling, and belief that registration scheme would aid in control of crime was justified. U.S.C.A.Const. Amend. 4.

3. Constitutional Law

Workers' registration ordinance of St. Mary Parish Police Jury mandating disclosure of fingerprints, photographs,

addresses for past five years, names and addresses of relatives, and other relevant information was not violative of right to travel and equal protection since, with one minor exception, ordinance was directed to all persons, residents and nonresidents, applying for and beginning employment in parish and, in any event, police jury had a rational basis for concluding that registration requirement was related to legitimate interest of parish in controlling crime problem. U.S.C.A.Const. Amend.4.

4. Commerce

Though workers' registration ordinance of St. Mary Parish Police Jury mandating disclosure of fingerprints, photographs, addresses for past five years, names and addresses of relatives, and other relevant information had an effect on interstate commerce insofar as it applied to those who traveled into parish, where infringement was rationally related to legitimate interest of parish in controlling ist crime problem, minimal burden on interstate commerce was reasonable, did not exceed state's regulatory power, and did not unduly restrict free movement of labor in interstate commerce. U.S.C.A.Const. art 1, § § 8, cl. 3. 10, cl. 2.

5. Searches and Seizures

Workers' registration ordinance of St. Mary Parish Police Jury mandating disclosure of fingerprints, photographs,

addresses for past five years, names and addresses of relatives, and other relevant information was not violative of Fourth Amendment guarantee against unreasonable search and seizure. U.S.C.A.Const. Amend. 4.

6. Criminal Law

Workers' registration ordinance of St. Mary Parish Police Jury mandating disclosure of fingerprints, photographs, addresses for past five years, names and addresses of relatives, and other relevant information was not violative of Fifth Amendment guarantee against self-incrimination. U.S.C.A. Const. Amend. 5.

7. Commerce

Workers' registration ordinance of St. Mary Parish Police Jury mandated disclosure of fingerprints, photographs, addresses for past five years, names and addresses of relatives, and other relevant information did not represent an impermissible levy of duties on imports or exports. U.S.C.A. Const. art. 1, § § 8, cl. 3, 10, cl.2.

M. David Gelfand, R. James Kellogg, New Orleans, La., for Forest Reubin and Southern Mut. Help Ass'n.

Andrew Reed, Aycock, Horne, Caldwell, Coleman & Duncan, Morgan City, La., for Service Mach. & Shipbuilding Corp.

Bernard E. Boudreaux, Jr., Bauer, Darnall, McNulty & Boudreaux, Franklin, La., for Chester C. Baudoin, Sheriff, St. Mary Parish.

Anthony J. Guarisco, Jr., Morgan City, La., for Edwin Edwards, Governor of Louisiana.

Michael J. Aloise, Jr., Morgan City, La., for Robert Stoute, Identification officer for St. Mary Parish.

Edward M. Leonard, Jr., Morgan City, La., for St. Mary Parish Police Jury.

J. Marvin Montgomery, Asst. Atty. Gen., Baton Rouge, La., for William J. Guste, Jr., Atty. Gen., State of La.

MEMORANDUM OPINION

DAVIS, District Judge.

STATEMENT OF THE CASE

Plaintiffs sued to declare invalid and enjoin enforcement of a workers' registration ordinance enacted by the St. Mary Parish Police Jury. Plaintiff Service Machine & Shipbuilding Corporation is an employer and plaintiff Forest Reubin is a potential employee.

FACTS

Pursuant to authority granted by a state enabling act,[1] the St. Mary Parish Police Jury enacted a worker registration ordinance,[2] which is the subject of the constitutional attack in this suit.

During the past 10 years, St. Mary Parish has experienced both the advantages and disadvantages of rapid population growth which resulted from the development of the offshore oil and gas industry. The St. Mary Parish Police Jury believed that the large number of transient workers attracted to this labor-hungry industry contributed significantly to its crime problems. The members of the police jury viewed the crime rate of their parish as higher than the crime rate of neighboring parishes.[3]

THE ORDINANCE

Ordinance 837 mandates that employers require certain workers to obtain a worker's registration card as a contition of

1. The state enabling act is appended as Appendix A.

2. The ordinance is appended as Appendix B.

3. For example, the crime rate of St. Mary Parish during the year 1977 was 3,633.0/100,000 while the crime rate of adjoining Iberia Parish, which was similar in population size and proximity to the coast. was 1,948.7/100,000. Louisiana Commission on Law Enforcement, *Crime in Louisiana 1977* (1978)

employment. In order to obtain a registration card, the job applicant must register with a licensed franchisee, complete a questionnaire, be fingerprinted and photographed and pay up to $10 as a registration fee. The job applicants subject to the ordinance are: 1) all persons who travel into the parish to seek employment and 2) all current workers who seek to change employment.

The ordinance apparently does not require registration and custody of a registration card by an individual: 1) who is currently employed in St. Mary Parish and does not seek to change his employment; 2) who remains unemployed; 3) who was a resident of St. Mary Parish and unemployed on the effective date of the ordinance and who seeks to obtain employment in St. Mary Parish for the first time; and 4) who is self-employed.

THE CONSTITUTIONAL GROUNDS FOR THE ATTACK ON THE ORDINANCE

Plaintiffs urge that the ordinance impermissibly infringes on rights secured under the United States Constitution in the following respects: 1) violates the commerce clause (Article 1, § 8); 2) represents an impermissible levy of duties on imports or exports (Article 1, § 10); 3) violates plaintiffs' right to travel guaranteed by the due process clause of the fourteenth

amendment and other provisions of the United States Constitution; 4) violates plaintiffs' right of privacy guaranteed by the due process clause of the fourteenth amendment and other provisions of the United States Constitution; 5) violates rights gruaranteed to plaintiff Reubin and other members of his class by the equal protection clause of the fourteenth amendment; 6) violates guarantees against unreasonable search and seizure granted by the fourth amendment; 7) violates an employee's fifth amendment right not to be compelled to be a witness against himself.

RIGHT TO PRIVACY

Plaintiff Reubin contends that the mandated disclosure of fingerprints, photographs, addresses for the past five years, names and addresses of relatives and other information required on the application deprives plaintiff of privacy guaranteen to him by the United States Constitution.

The threshold question to be considered is whether the information which the ordinance requires plaintiff to disclose is the type information which is within the zone of privacy protected by the due process clause of the Constitution.

The two aspects of the protected right to privacy were set forth by the Supreme Court in *Whalen v. Roe*, 429 U.S. 589, 598-600, 97 S.Ct. 869, 876, 51 L.Ed.2d 64 (1977) as follows:

> The cases sometimes characterized as protecting "privacy" have in fact involved at least two different kinds of

> interests. One is the individual interest in avoiding disclosure of personal matters, and another is the interest in independence in making certain kinds of important decisions. (footnotes deleted).

Plaintiffs' complaints focus on the first aspect of the right to privacy-avoiding disclosure of personal matters.[4]

The landmark cases dealing with the confidentiality branch of the right of privacy have involved dissemination of information which in every sense is much more sensitive and personal than the information required to be divulged by Ordinance 837.[5]

4. It is only after a determination that the information required to be divulged is within the scope of the protected privacy zone that we reach the standard of scrutiny to be applied to plaintiffs' claims. In *Plante v. Gonzales,* 575 F. 2d 1119 (5th Cir. 1978), the court held that detailed financial information required to be disclosed did not fall within the "autonomy" branch of the right to privacy although the disclosure had an indirect effect on intimate decisions. Despite the court's finding of an indirect effect on this branch of plaintiff's right to privacy, the court in its analysis found no need to choose the appropriate standard of review.

5. *Whalen v. Roe,* 429 U.S. 589, 97 S.Ct. 869, 51 L.Ed.2d 64 (1977) [names of persons for whom Schedule II drugs were prescribed]; *Nixon v. Administrator of General Services,* 433 U.S. 425, 97 S.Ct. 2777, 53 L.Ed.2d 867 (1977) [personal diaries and tapes of personal family conversations belonging to former President Nixon]; *Planned Parenthood of Missouri v. Danforth,* 428 U.S. 52, 96 S.Ct. 2831, 49 L.Ed.2d 788 (1976) [names of persons who obtain abortions]; *Pollard v. Cockrell,* 578 F.2d 1002 (5th Cir. 1978) [names of persons patronizing massage parlors]; *Plante v. Gonzales,* 575, F.2d 1119 (5th Cir. 1978) [financial affairs of public officials].

The Supreme Court in *Paul v. Davis*,[6] held that a police official had no liability under 42 U.S.C. § 1983 for disseminating information relating to plaintiff's arrest record for shoplifting. The Court seemed to hold that the individual's right to privacy was not violated by the dissemination of this type information.[7]

In *Thom v. New York Stock Exchange*, 306 F.Supp. 1002 (S.D. N.Y. 1969), *aff'd per curiam sub nom. Miller v. New York Stock Exchange*, 425 F.2d 1074 (2d Cir. 1970), the Second Circuit affirmed the district court dismissal of an action challenging a New York statute that required the fingerprinting of all employees of the New York Stock Exchange. The district court stated:

> The submission of one's fingerprints is no more an invasion of privacy than the submission of one's photograph or signature to a prospective employer, which the Stock Exchange rules still require. As the Supreme Court in *Davis* observed 'Fingerprinting involves none of the probing into an individual's private life and thoughts that marks an interrogation of search.' The actual

6. 424 U.S. 693, 96 S.Ct. 1155, 47 L.Ed.2d 405 (1976).

7. *But see Utz v. Cullinane*, 172 U.S.App.D.C. 67, 520 F. 2d 467 (1975).

> inconvenience is minor; the claimed indignity, non-existent; detention, there is none; nor unlawful search; nor unlawful seizure.

306 F.Supp. 1009 (footnotes omitted).[8]

I conclude that none of the information required to be divulged by the ordinance can be characterized as sensitive personal information. The vast bulk of the information-name, address, identity of close relatives-is divulged numerous times during the course of the average individual's lifetime. This information is normally divulged when one enters primary school, high school and college; when one is married and on many employment applications.

Plaintiff Reubin argues that a job applicant, by divulging prior addresses, is subject to possible future embarrassment if the job applicant has a criminal record or has been confined in a mental institution. Plaintiff also argues that the address of a

8. *See also* the district court opinion at page 1008 in which the court documents the widespread practice of fingerprinting as a means of identification of school children and babies and a random selection of federal and state statutes which authorize or require fingerprinting.

No case has been cited in which a statute requiring fingerprinting has been declared unconstitutional. On the other hand, several courts have upheld such statutes in the face of constitutional attacks. See *Thom v. New York Stock Exchange,* [fingerprinting of persons employed by or doing business with Exchange]; *Walton v. City of Atlanta,* 181 F.2d 693 (5th Cir. 1950) [fingerprinting of taxicab drivers]; *People v. Stuller,* 10 Cal.App.3d 582, 89 Cal.Rptr. 158 (4th Dist. 1970) [fingerprinting of workers connected with the tourist industry].

parent or other relative may reflect confinement in a prison or mental institution. Plaintiff also argues that the completed application may reveal that: 1) the applicant is illegitimate (if the father's identity is unknown or if the father's name is different from that of the mother), or 2) that the applicant and his wife are separated (if the response on the application reflects an address which is different for the wife than the applicant).

The court, in *Plante*,[9] considered a similar question when it was argued that compliance with the financial disclosure statute could reveal memberships, associations and beliefs. The court disposed of this argument as follows:

> Although in some particular situations, rigorous application of the Amendment might implicate first amendment freedoms, when considering the Amendment on its face, this threat is too remote to raise the issue.

575 F.2d at 1132-33.

[1] I conclude that the information required to be divulged by Ordinance 837 is not the sensitive, personal type information entitled to protection under the Constitution.

In the event, however, that a reviewing court should disagree with my conclusion, it is in order that I make further findings with respect to the scrutiny which should be applied to plaintiffs' claims.

9. *See* note 4, *supra*.

In view of the minimal anticipated impact which the required disclosure will have on the plaintiffs, I conclude that the most stringent review test which should be applied to this claim is the intermediate test applied in *Plante.*[10]

> The constitutionality of the amendment will be determined by comparing the interests it serves with those it hinders.

575 F.2d 1119, 1134.

The parish police jury reasoned that: 1) St. Mary Parish had a serious crime problem. I conclude that the governing body was justified in its belief.[11] 2) The large transient population contributed to the crime problem. Hard evidence on this question is difficult to produce. I am unable to characterize as unreasonable the belief of the governing body that the large influx of young, highly mobile, unskilled men contributed to the parish's crime problem. 3) The nature and quantity of the labor force required by the oil industry attracted an inordinate

10. *See* note 4, *supra.*

11. Whether St. Mary Parish's crime rate was disproportionate to the other parishes in the state is not necessarily relevant. It is apparent that St. Mary Parish has a significant crime problem; *see* note 3, *supra.*

number of fugitives from other jurisdictions who committed a disproportionate amount of crime in relation to the population in general.[12]

The parties stipulated that the purpose of the ordinance was to "reduce the rate of crime in the parish by deterring suspects who are wanted in other jurisdictions from moving into the parish to work and to assist the detection of persons who have committed crimes in the parish."[13]

The parish officials take the position that a fugitive will be deterred from moving into St. Mary Parish because of his reluctance to be fingerprinted and that this will reduce the number of fugitives in the parish and consequently assist in the reduction of the crime rate. Moreover, the defendants argue that if a crime is committed by an individual about whom nothing is known and who perhaps has given a alias to his employer, it is very difficult to trace and apprehend that suspect when he flees. The defendants contend that if a fingerprint of the suspect is available for processing through FBI

12. I am convinced from the testimony of FBI Special agent Tom Colarelli that St. Mary Parish attracted more than its share of fugitives.

Whether fugitives are more prone to commit crime than the population in general is probably impossible to prove or disprove. I am unable to say that an affirmative opinion on this question be legislative body is unreasonable.

13. Pretrial stipulation 5(e).

and other police records, vital information can be obtained to assist in identifying and apprehending the suspect.

[2] There is no hard evidence that the objectives of the police jury will be realized. By enacting Ordinance 837, the police jury is trying a new approach to aid in the control of its crime problem. They believe the ordinance will deter fugitives from entering the area and expect the information gathered will assist in identifying and apprehending criminals. The question is whether the policy jury properly exercised its discretion in the exercise of its police power. The Court, in *Whalen v. Roe*, stated:

> State legislation which has some effect on individual liberty or privacy may not be held unconstitutional simply because a court finds it unneccessary, in whole or in part. For we have frequently recognized that individual States have broad latitude in experimenting with possible solutions to problems of vital local concern.
>
> The New York statute challenged in this case represents a considered attempt to deal with such problems. It is manifestly the product of an orderly and rational legislative decision. It was recommended by a specially appointed commission which held extensive hearings on the proposed legislation and drew on experience with similar programs in other states. There surely was nothing unreasonable in the assumption that the patient-identification requirement might aid in the enforcement of laws designed to minimize the misuse of dangerous drugs. For the requirement could reasonably be expected to have a deterrent effect on potential violators as well as to aid in the detection or investigation of specific instances of apparent abuse. At the very least, it would seem clear that the State's vital interest in controlling the distribution of dangerous drugs would support a decision to experiment with new techniques

> for control. For if an experiment fails-if in this case experience teaches that the patient identification requirement results in the foolish expenditure of funds to acquire a mountain of useless information-the legislative process remains available to terminate the unwise experiment. It follows that the legislature's enactment of the patient-identification requirement was a reasonable exercise of New York's broad police powers. The district court's finding that the necessity for the requirement had not been proved is not, therefore, a sufficient reason for holding the statutory requirement unconstitutional.

429 U.S. 589, 597-98, 97 S.Ct. 869, 875 (1977). (footnotes omitted).

Applying the balance test, I conclude that: 1) the potential for inconvenience and embarrassment to the individual job applicant is minimal; 2) the interest of the state and parish in controlling crime is compelling; 3) the police jury was justified in believeing that its registration scheme would aid in the control of crime.

RIGHT TO TRAVEL AND EQUAL PROTECTION OF LAW

Although Ordinance 837 applies to all job applicants who travel into St. Mary Parish, it also applies to most residents of the parish who apply for employment. The only job applicants not burdened with the registration requirements are residents seeking their first job. Thus, the facts presented here are clearly distinguishable from the classic "right to travel"

cases where only those persons who exercised their constitutional right to travel were affected by the laws in question.[14]

The test of whether or not a right to travel issue exists is not merely whether the legislation in question will deter non-residents from entering the area. Any restrictive legislation that applies to all who live in an area may deter non-residents from entering the area if the outsiders do not wish to become subject to the restriction.

With one minor exception, the ordinance is direct to all persons-residents and non-residents-applying for and beginning employment in St. Mary Parish.

[3] If the fact that all non-resident and only some resident job applicants are subject to the ordinance presents a "right to travel" issue, I conclude that the police jury had a rational basis for its choice of the class to be reached by this ordinance. The police jury could have rationally concluded that registering and fingerprinting persons subject to the ordinance would deter fugitives from entering St. Mary Parish and would assist in the apprehension of members of their highly mobile labor force suspected of committing crimes. The

14. *Shapiro v. Thompson,* 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969); *Dunn v. Blumstein,* 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972); and *Memorial Hospital v. Maricopa County,* 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306 (1974).

police jury may well have concluded that but for the highly mobile nature of its labor force the information contained in the registration forms would be available to law enforcement authorities from relatives, neighbors and other contacts in a more stable socity.[15]

Plaintiffs make a further argument based upon the statutory interpretation of the enabling act and Ordinance 837.

Plaintiffs point to the fact that the enabling act authorizes the parish governing authority to enact a system of identification and registration of *itinerant workers.* The enabling act does not define itinerant workers. The ordinance defines itinerant laborers or employees as being "any persons who travel into the Parish of St. Mary after the effective date of this

15. No explanation is offered by the parish for excluding from application of this ordinance residents in the parish who apply for their first job. It may be that the parish governing authority considered that the number of persons included in this exception was so small and that residents applying for their first job had sufficient roots in the parish to obviate the necessity of subjecting them to the requirements of the ordinance. I conclude that this minor exception does not render the class invalid. The law is clear that the class need not be perfect or mathematically precise and that the legislation need not attack all evils at once. *City of New Orleans v. Dukes,* 427 U.S. 297, 96 S.Ct. 2513, 49 L.Ed.2d 511 (1976); *Dandridge v. Williams,* 397 U.S. 471, 90 S.Ct. 1153, 25 L.Ed.2d 491 (1970); and *Lindsley v. Natural Carbonic Gas Co.,* 220 U.S. 61, 31 S.Ct. 337, 55 L.Ed. 369 (1911).

ordinance to seek employment or to be employed in this parish. Itinerant laborers are also persons gainfully employed in the Parish of St. Mary who seek to change employment after the effective date of this ordinance."

Plaintiffs argue that the St. Mary Parish Police Jury impermissibly boradened the definition of itinerant laborers to include some laborers who are residents of St. Mary Parish and that the only persons the parish governing authority could properly make subject to the registration requirements within the authority granted by the enabling act were itinerants and that itinerants are by definition non-residents.

> The dictionary definition of itinerant is: Itinerant (adj.)-that travels about from place to place (an agricultural worker, a theatrical troupe) esp. that travels about in covering a circuit (a preacher); (noun)-one that travels about from place to place; esp. one that travels about in covering a circuit.

Webster's Third New International Dictionary 1203 (1961).

I conclude that it is unnecessary to decide whether the St. Mary Parish Police Jury was restricted, under the terms of the enabling act, to reaching only non-residents with Ordinance 837. I reached this conclusion because under my interpretation of *Shapiro v. Thompson*[16] and *Sosna v. Iowa*[17] no constitutionally protected right to travel or equal protection violation

16. 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969).

17. 419 U.S. 393, 95 S.Ct. 553, 42 L.Ed.2d 532 (1974).

is presented even if the ordinance, because of the limitation in the enabling act, can only reach job applicants who travel into St. Mary Parish.

In *Shapiro,* the Supreme Court struck down a one-year residency requirement placed on eligibility for welfare benefits. The Court found that the waiting period created two classes of needy families-those in residence for more than one year and those in residence for less than that time. The Court concluded that this classification was unjustified and infringed upon the short-term residents' right to travel. Because the waiting period touched on the fundamental right of interstate movement and could not be shown to promote a compelling state interest, the requirement violated the Equal Protection Clause.[18]

18. The Court was careful to point out that not every residency requirement should fall:

> We imply no view of the validity of waiting period *or* residence requirements determining eligibility to vote, eligibility for tuition-free education, to obtain a license to practice a profession, to hunt or fish, and so forth. Such requirements may promote compelling state interests on the one hand, or, on the other, may not be penalties upon the exercise of the constitutional right of interstate travel.

394 U.S. at 638, n. 21, 89 S.Ct. at 1333.

Further support for the view that a lesser impact on the right to travel might not trigger strict scrutiny is found in *Memorial Hospital v. Maricopa County,* 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306 (1974).

In *Sosna,* the Court failed to apply that same strict scrutiny test to a one-year residency requirement for obtaining a divorce. Although the Court seemed to recognize that this waiting period did burden the right to travel, *Shapiro* and its progeny were distinguished because the benefits there were "irretrievably foreclosed" while Mrs. Sosna could obtain her divorce if she waited a year.[19] The Court apparently concluded that the budgetary and record-keeping justifications offered in *Shapiro* were inadequate but that the state's interest in protecting its judgments from collateral attack and in requiring a close nexus between the state and the party obtaining the divorce were sufficient to uphold this very similar waiting period.

The situation at hand is more closely analogous to that of the *Sosna* case. Here, the parish requires registration of those who come in; this is far from the harsh penalty imposed on the plaintiffs in *Shapiro.* The parish's interests in keeping out fugitives and in solving crimes are clearly more important than the justifications offered in *Shapiro.* Applying the type

19. Actually, the plaintiffs in *Shapiro* could obtain welfare after waiting a year also but presumably the hardships to them during the year were greater than those facing Mrs. Sosna.

of balancing evidenced in *Sosna* and some lower court cases[20] to these facts reveals that the parish's interests far outweigh the potential detriment which may be experienced by job applicants.

INTERSTATE COMMERCE

[4] Plaintiffs also attack the ordinance on the ground that it unduly restricts the free movement of labor in interstate commerce. The ordinance does not discriminate against the free movement of labor in interstate commerce; most resident job applicants are required to comply with the ordinance to the same extent as job applicants who travel into the parish. The ordinance does have an effect on interstate commerce, however, insofar as it applies to those who travel into the parish.

Because the ordinance does affect commerce, its validity must be judged in terms of the test set forth in *Southern Pacific Co. v. Arizona,* 325 U.S. 761, 65 S.Ct. 1515, 89 L.Ed. 1915 (1945). The infringement must be rationally related to a

20. Lesser scrutiny, because of the less severe restriction on the right to travel, was also used in the following cases and has not been disapproved by the Supreme Court; *see Spatt v. New York,* 361 F.Supp. 1048 (E.D.N.Y.1973), *aff'd mem.,* 414 U.S. 1058, 94 S.Ct. 563, 38 L.Ed.2d 465 (1973) and *Starns v. Malkerson,* 326 F.Supp. 234 (D.Minn.1970), *aff'd mem.,* 401 U.S. 985, 91 S.Ct. 1231, 28 L.Ed2d 527 (1971).

legitimate state interest and the burden on commerce must be outweighed by the interest of the parish in enforcing the ordinance.

I have concluded, as discussed earlier, that the registration requirement is rationally related to the parish's legitimate interest in controlling its crime problem. Registration imposes a minimal burden on interstate commerce of labor, a burden which is far outweighed by the parish's goal of better crime control. The minimal burden on interstate commerce is reasonable, does not exceed the state's regulatory power and does not violate the Constitution.[21]

Plaintiffs relying on *Davis v. Mississippi*,[22] assert a violation of the fourth amendment which protects against unreasonable search and seizure.

In *Davis*, the defendant was illegally detained. During the illegal detention, a fingerprint was taken which was used in the prosecution of defendant for the same crime for which he was illegally arrested.

21. The factual context of *Edwards v. California*, 314 U.S. 160, 62 S.Ct. 164, 86 L.Ed. 119 (1941) relied upon by plaintiffs is inapposite here. The law in question there prohibited the transport of indigents into California; the ordinance here at issue does not prohibit any entry into the parish, it merely requires some of those who enter to register.

22. 394 U.S. 721, 89 S.Ct. 1394, 22 L.Ed.2d 676 (1969).

Plaintiffs' reliance on *Davis* is misplaced. *Davis* simply stands for the proposition that a fingerprint obtained as a product of an illegal detention cannot be used as evidence in a subsequent criminal prosecution on the charge for which defendant was illegally detained.

[5] Plaintiffs' claim that the ordinance violates their fourth amendment rights is rejected.[23]

[6] Plaintiffs' asserted violation of fifth amendment rights is also without merit.

It is clear that the taking of identifying characteristics such as fingerprints or handwriting exemplars are outside the constitutional protection of the fifth amendment.[24]

23. *See Thom v. New York Stock Exchange,* 306 F.Supp. at 1009.

24. *People v. Stuller,* 10 Cal. App.3d.582, 89 Cal. Rptr. 158 (1970) and *Schmerber v. California,* 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966).

[7] Plaintiffs' constitutional attacks premised on violation of privileges and immunities,[25] and impermissible levy of a duty[26] are also rejected.

CONCLUSION

For the above reasons, plaintiffs' demands for injunction and declaratory judgment are denied.

In view of my conclusion that the ordinance does not violate the rights secured to plaintiffs under the United States Constitution, I do not consider plaintiffs' claims under the constitution and law of Louisiana.

25. Analysis of the privileges and immunitites claim involves the same factors as analysis of the ordinance in terms of the right to travel and the commerce clause. *See* the text at notes 14-21, *supra.*

26. The balancing test used to determine the existence of an undue burden on interstate commerce is also applied to determine the permissibility of an ordinance such as this under the import-export clause. *See* the text at notes 20-21, *supra.*

APPENDIX A

IDENTIFICATION AND REGISTRATION OF ITINERANT WORKERS

ACT NO. 795

HOUSE BILL NO. 1587

An Act to amend Section 1236 of Title 33 of the Louisiana Revised Statutes of 1950 by adding thereto a new Paragraph, to be designated as Paragraph (41) thereof, to authorize the governing authority of the parishes of St. Mary, Cameron, Vermillion Iberia, Assumption, Terrebonne and Lafourche to adopt ordinances providing for a system of identification and registration of itinerant workers, prohibiting any employer from employing any itinerant worker who is not properly identified and regis-

tered, including penalties applicable to employers, and to provide for related matters. Notice of intention to introduce this Act has been published as provided by Article III, Section 13 of the Constitution of Louisiana.

Be it enacted by the Legislature of Louisiana:

Section 1. Paragraph (41) of Section 1236 of Title 33 of the Louisiana Revised Statutes of 1950 is hereby enacted to read as follows:

§ 1236. Powers of police jury

The police juries and other parish governing authorities shall have the following powers:

* *

(41) The governing authority of the parishes of St. Mary, Cameron, Vermilion, Iberia, Assumption, Terrebonne and Lafourche may adopt ordinances providing for a system of identification and registration of itinerant workers, prohibiting any employer from employing any itinerant worker who is not properly identified and registered, including penalties applicable to employers for violations of such ordinances.

Section 2. If any provision or item of this Act or the application therof is held invalid, such invalidity shall not affect other provisions, items, or applications of this Act which can be given effect without the invalid provisions, items, or applications, and to this end the provisions of this Act are hereby declared severable.

Section 3. This Act shall become effective upon signature of the governor, or if not signed by the governor, upon expiration of the time for bills to become effective without signature of the governor as provided in Article III, Section 18 of the constitution.

Section 4. All laws or parts of laws in conflict herewith are hereby repealed.

Approved July 17, 1978.

APPENDIX B

ORDINANCE NO. 837

An Ordinance to require all persons, firms, corporations, institutions, and public bodies employing itinerant laborers in this Parish, to obtain identification information including picture and fingerprints of all laborers employed by them, to furnish application information, fingerprints, and pictures to the St. Mary Parish Police Jury for information purposes, and to provide penalties for violation of same.

SECTION 1: ***DEFINITIONS:***

Employers as used herein shall mean all persons, firms corporations, labor contractors, institutions and public bodies in the Parish of St. Mary who employs the services of another and for whom employers work and receive wages or salaries.

Itinerant laborers or employees are any persons who travel into the Parish of St. Mary, after the effective date of this ordinance, to seek employment or to be employed in this Parish. Itinerant laborers are also persons gainfully employed in the Parish of St. Mary who seek to change employment after the effective date of this ordinance.

SECTION 2:

Except as provided in Section 3 hereof, all employers who employ itinerant laborers shall require, prior to employment, that such laborer complete an application-identification form to be furnished by the St. Mary Parish Police Jury, which shall include photograph and fingerprints of the laborer.

SECTION 3:

Employers shall issue to employees hired by them, an identification card, which shall contain the name, address and fingerprint of such employee, said identification cards to be furnished by the St. Mary Parish Police Jury. Once an employee has been issued an identification card in compliance with the foregoing, such employee need not reapply upon changing jobs; the presentation of this card to prospective employers shall constitute authority for employers to hire such employees without the necessity of completing the application-identification forms provided for in Section 2 hereof.

SECION 4:

Employers shall forward to the St. Mary Parish Police Jury, Courthouse, Franklin, Louisiana, all completed application cards, fingerprint cards, and pictures of employees, on a

weekly basis, and shall indicate thereon which applicants were actually hired by the employer.

SECTION 5:

The St. Mary Parish Police Jury shall make available to the Sheriff of St. Mary Parish, all such identification forms, fingerprint cards, and pictures of employees for further identification.

SECTION 6:

It shall be unlawful for any person who has been issued an identification card, to transfer such card to another, or to falsify any of the information contained thereon or in the application therefor.

SECTION 7:

The Police Jury of St. Mary Parish, Louisiana shall employ persons to complete application forms, fingerprint cards, and issue identification cards to laborers. A fee of not more than $10.00 shall be charged for each application so completed. Nothing contained herein shall prevent employers from completing the applications and submitting same to the Police Jury as provided herein.

SECTION 8:

The Police Jury shall establish an office for the administration and enforcement of this ordinance, and may prescribe forms to be completed, identification cards to be issued and records to be maintained.

SECION 9:

Nothing contained herein shall be construed as a denial of employment by the Police Jury of St. Mary Parish, the Sheriff or other law enforcement agency of St. Mary Parish; nor shall any provision of this ordinance be construed as permission for an employer to deny employment to anyone because of race, sex, ancestry, religion or national origin.

SECTION 10:

Any person, firm, corporation, labor contractor, institution or public body violating the provisions of this Ordinance shall be guilty of a misdemeanor and upon conviction by a Court of competent jurisdiction shall be fined a minimum of $25.00 and a maximum of $100.00 or imprisonment at the discretion of the Court. Each separate violation of the provisions of this Ordinance shall constitute a separate offense subject to said penalties.

SECTION 11:

In case of any one or more of the provisions of this ordinance shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of said ordinance, but the same shall be construed and enforced as if such illegal or invalid provisions had not been contained herein. Any constitutional or statutory provision enacted after the date of this ordinance which validates or makes legal any provision hereof shall be deemed to apply hereto.

ST. MARY PARISH

ITINERANT LABOR IDENTIFICATION OFFICE

IDENTIFICATION NO. _____

1._____
NAME (Last) (First) (Middle)

(a) _____
NICKNAMES OR ALIASES

2._____
Present Address (Not P. O. Box or General Delivery)

(a) _____ (b) _____ (c)_____
Home Tel. No. Business Tel. No. Social Sec. No.

3. Former residences for last five (5) years:

From - To Year	Address	City, State

4. Sex 5. Race 6. Height 7. Weight 8. Eye Color_____

____Female ____White ____Ft. ____In. ____Lbs. Hair Color _____

____Male ____Other

9. Name of Spouse: _____

Address of Spouse: _____

10. Last place of Employment: Company Name: _____

(a) _____ Address: _____
Occupation

11.	NAME	ADDRESS
Father		
Mother		
Sister		
Brother		

12. Date of Birth _____ 13. Driver's License No. _____

13. (a) State Issued: _____

14. Are you a registered voter?_____ If yes, State of Registration ____

Date _____ _____
Signature of Applicant

* * *

NAME OF COMPANY ISSUING
IDENTIFICATION CARD: _____

ATTACH PHOTOGRAPH OF APPLICANT HERE

APPENDIX C

[Include Notice of Appeal]

Filed on Aug. 6, 1980

A-52

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

SERVICE MACHINE & SHIPBUILDING
CORP., ET AL,
Plaintiffs

versus

EDWIN EDWARDS, ET AL,
Defendants

CIVIL ACTION NO. 79-1520

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

I. Notice is hereby given that EDWIN W. EDWARDS, individually and in his official capacity as the Governor of Louisiana; WILLIAM J. GUSTE, JR., individually and in his official capacity as Attorney General of the State of Louisiana; PARISH OF ST. MARY, LOUISIANA; BILLY BUTLER, President, MATILDA ALOISIO, LEE CHAMPAGNE, JOSEPH DAVIS, JR., LOYLIS DUHON, ALBERT FOULCARD, EVERETT FOUQUIER, WILSON GAUTREAUX, GREGORY HAMER, EMORY JENNINGS, A. J. LEBOURGEOIS,

LAWRENCE MICHEL, LIGE ROBINSON, J. PAUL RUSSO, HAROLD J. CLAUSEN, individually and in their official capacity as the Police Jury of St. Mary Parish, Louisiana; CHESTER BAUDOIN individually and in his official capacity as the Sheriff of St. Mary Parish; ROBERT STOUTE, individually and in his official capacity as the St. Mary Parish Identification Officer, the defendants above named, hereby appeal to the Supreme Court of the United States from the judgment of this court entered in this action on May 12, 1980.

This appeal is taken pursuant to 28 USC 1254 (2).

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

Transcript together with all exhibits.

III. The following questions are presented by this appeal:

1. Is the commerce clause an appropriate ground for invalidating a local ordinance requiring the registration of workers entering the locality or changing jobs within that locality where the ordinance constitutes an attempt to deter

and detect crime and does not seek to erect barriers to interstate trade?

2. Did the lower court err in subjecting the ordinance to commerce clause analysis instead of scrutinizing the ordinance under right to travel, equal protection and right to privacy standards?

3. Has the lower court properly applied applicable commerce clause standards if it fails to consider the economic effects of the ordinance's interference with interstate trade and to relate both the local ordinance and alternative means for accomplishing the same local purpose to their economic effect on interstate commerce?

/S/ Edward M. Leonard, Jr.

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Joseph Davis, Jr.
Loylis Duhon
Albert Foulcard
Everett Fourquier

Wilson Gautreaux
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Attorney for Edwin Edwards

I, Tommy Longman, an investigator for the District Attorney's Office of the Sixteenth Judicial District, the attorney of record for the Police Jury of the Parish of St. Mary, State of Louisiana, depose and say that on the 6th day of August, 1980, I served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States on _____ A.C.L.U. _____, appellee herein, by delivering the same to Ann Woolhander in the office of _____ George Strickler counsel of record for said A.C.L.U. located at _____ 1419 Richards Bldg, N.O., La.

/S/ Tommy Longman

TOMMY LONGMAN

SUBSCRIBED AND SWORN before me, at Franklin, La. this 6th day of August, 1980.

(illegible) /S/

NOTARY PUBLIC

I, Tommy Longman, an investigator for the District Attorney's Office of the Sixteenth Judicial District, the attorney of record for the Police Jury of the Parish of St. Mary, State of Louisiana, depose and say that on the 6th day of August, 1980, I served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States on _____ A.C.L.U. _____, appellee herein, by delivering the same to Virginia Allen in the office of _____ M. David Gelfand counsel of record for said A.C.L.U. located at _____ Tulane University School of Law, N.O.

/S/ Tommy Longman

TOMMY LONGMAN

SUBSCRIBED AND SWORN before me, at Franklin, Louisiana this 6th day of August, 1980.

(illegible) /S/

NOTARY PUBLIC

I, Tommy Longman, an investigator for the District Attorney's Office of the Sixteenth Judicial District, the attorney of record for the Police Jury of the Parish of St. Mary, State of Louisiana, depose and say that on the 6th day of August, 1980, I served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States on Forest Reubin & South Mut. Help Assoc., appellee herein, by delivering the same to Lisa Montrell in the office of R. James Kellog counsel of record for said Forest Reubin located at 806 Perdido St. Suite 401, New Orleans, La.

/S/ Tommy Longman

TOMMY LONGMAN

SUBSCRIBED AND SWORN before me, at Franklin, Louisiana this 6th day of August, 1980.

(illegible) /S/

NOTARY PUBLIC

I, Tommy Longman, an investigator for the District Attorney's Office of the Sixteenth Judicial District, the attorney of record for the Police Jury of the Parish of St. Mary, State of Louisiana, depose and say that on the 6th day of August, 1980, I served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States on Service Machine and Shipbuilding Corporation, appellee herein, by delivering the same to secretary in the office of Andrew Reed counsel of record for said Service Machine and Shipbuilding Corp. located at Morgan City, Louisiana

/S/ Tommy Longman

TOMMY LONGMAN

SUBSCRIBED AND SWORN before me, at Morgan City, Louisiana this 6th day of August, 1980.

(illegible) /S/

NOTARY PUBLIC

APPENDIX D

(Ordinance Appears in
Appendix A & B in District Court)

APPENDIX E

33 *La. Rev. Stat. Ann.* § 1236 (41) (West, Supp. 1980)

§ *1236. Powers of police jury*

The police juries and other parish governing authorities shall have the following powers:

* *

(41) The governing authority of the parishes of St. Mary, Cameron, Vermilion, Iberia, Assumption, Terrebonne and Lafourche may adopt ordinances providing for a system of identification and registration of itinerant workers, prohibiting any employer from employing any itinerant worker who is not properly identified and registered, including penalties applicable to employers for violations of such ordinances.

Section 2. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions, items, or applications of this Act which can be given effect without the invalid provisions, items, or applications, and to this end the provisions of this Act are hereby declared severable.

Section 3. This Act shall become effective upon signature of the governor, or if not signed by the governor, upon expiration of the time for bills to become effective without signature of the governor as provided in Article III, Section 18 of the constitution.

Section 4. All laws or parts of laws in conflict herewith are hereby repealed.

APPENDIX F

Article 1, § 8, cl. 3 of the United States Constitution

Sec. 8, Cl. 3. Power of Congress to regulate commerce.

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes.

Supreme Court, U. S.
FILED
SEP 15 1980
MICHAEL RODAK, JR., CLERK

NO. 80-215

In the Supreme Court of the United States

OCTOBER TERM, 1980

EDWIN W. EDWARDS, et al.,
Appellants,

versus

SERVICE MACHINE & SHIPBUILDING CORPORATION, INC., et al.,
Appellees.

On Appeal From The United States Court Of Appeals For The Fifth Circuit

APPELLEES' MOTION TO AFFIRM

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

NO. 80-215

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versus

SERVICE MACHINE & SHIPBUILDING CORPORATION, INC., et al.,

Appellees.

On Appeal From The United States Court Of Appeals For The Fifth Circuit

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MOTION TO AFFIRM

Appellees, pursuant to Rule 16(1) of the Rules of the Supreme Court of the

United States, move that the judgment of the Court of Appeals for the Fifth Circuit be affirmed on the grounds that the Court of Appeals' decision closely follows an unbroken line of authority and that the questions presented by Appellants are so unsubstantial as to need no further argument.

STATEMENT OF THE CASE

Appellees adopt the statement given at the beginning of the Court of Appeals' opinion, 617 F.2d 70, 71-72 (5th Cir. 1980), which states the facts somewhat more comprehensively than Appellants do in their Jurisdictional Statement.

REASONS TO AFFIRM

I. THE COURT OF APPEALS CORRECTLY RULED THAT A LOCAL ORDINANCE VIOLATED THE COMMERCE CLAUSE BY REQUIRING ALL EMPLOYERS TO HIRE ONLY THOSE EMPLOYEES WHO FIRST OBTAIN A "WORKER'S IDENTITY CARD," PAY A $10.00 FEE, SUBMIT TO FINGERPRINTING, AND DISCLOSE VAST QUANTITIES OF PERSONAL INFORMATION.

The St. Mary Parish Worker's Identity System directly burdens and channels the interstate flow of labor by erecting totally unnecessary registration and fee barriers between willing workers and willing employers attempting to enter into a private employment relationship. In the discussion of their first question, Appellants press the novel argument that this scheme "simply does not implicate the commerce clause, as it does not affect 'commerce'." Jurisdictional Statement [J.S.], at 8. Nearly 40 years ago, however, this Court

already considered it "settled beyond question that the transportation of persons is 'commerce'." Edwards v. California, 314 U.S. 160, 172 (1941). Edwards invalidated a law aimed at preventing the migration of indigent persons into California during the Depression. In words that apply equally to the instant case, the Edwards Court concluded that the Commerce Clause forbids "any single State to isolate itself from difficulties common to all," such as social problems and crime, "by restraining the transportation of persons and property across its borders." Id. at 173.

Since Edwards, this Court has consistently ruled that the Commerce Clause encompasses not only the free movement of goods and animals, but also the interstate flow of human beings.

See, e.g., Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241, 256-257 (1964); Morgan v. Virginia, 328 U.S. 373 (1946).[1] Any lingering doubt that the Commerce Clause might not protect out-of-state workers (as well as products) against state discrimination was surely laid to rest by Lewis v. BT Investment Managers, Inc., 100 S. Ct. 2009 (1980). In Lewis, the Court ruled unanimously that the Commerce Clause was violated by a Florida law which

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1. These cases also extend the protection of the Commerce Clause to the interstate migrants and passengers themselves, and not, as Appellants suggest, only to the transportation process. "It is immaterial whether or not the transportation is commercial in character." Edwards v. California, supra, at 172 n.1. See Heart of Atlanta Motel, Inc. v. United States, supra, at 256-57, and sources cited therein.

discriminated against out-of-state investment advisory services--a form of interstate human commerce. This line of cases from Edwards through Lewis makes it clear that the Commerce Clause prohibits state and local government interference with attempts to migrate in search of employment.[2]

In the instant case, St. Mary Parish Ordinance No. 837 (passed pursuant to 33 La. Rev. Stat. Sec. 1236(41) (West Supp. 1980)) obstructs a free-flowing labor supply and penalizes interstate movement, by requiring every person who enters the Parish in search of employment and every person who changes jobs to obtain a

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2. Labor conditions have long been considered a subject of commerce. See United States v. Darby, 312 U.S. 100 (1941); NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937).

worker's identity card. These outsiders must be fingerprinted and photographed, reveal personal information, and pay a $10.00 fee. Any employer, public or private, who hires an employee without an identity card is subject to fine or imprisonment or both.[3] Not surprisingly, a large number of potential workers are forced to seek jobs in other states and parishes because they object to the unnecessary disclosure of private information and/or are unable to pay the fee. Record at 33-35, 343,353-55;

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3. This is similar to Edwards, in which it was the brother-in-law who brought the migrant to California, not the migrant himself, who was prosecuted. Yet in both cases, interstate migration was restricted by the law.

Plaintiffs' Exhibits [Pl. Ex.] O-Q, Record at 329-31.[4] Under the system, Appellee employers face difficulty in hiring sufficient employees.[5] Even if they are able to find employees who do not object to the intrusive questionnaires, the employers still must bear the substantial financial burden of paying the $10.00 fee for each

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4. Appellants requested in their Notice of Appeal that the Record and all exhibits in the case be transmitted to this Court. J.S. at A-53.

5. Unlike many other parts of the country, oil-rich St. Mary Parish is actually facing a labor shortage, so it must draw upon an interstate labor pool. See 617 F.2d at 71; Record at 30, 418, 423-24.

job applicant who cannot afford it.[6] The

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6. See 617 F.2d at 76. Increased cost of doing business can be a factor in establishing a Commerce Clause violation. See Raymond Motor Transportation, Inc. v. Rice, 434 U.S. 429, 445 (1978); Pike v. Bruce Chruch, Inc., 397 U.S. 137 (1970).

Appellants cannot justify this increased business cost on the basis of Department of Revenue v. Association of Washington Stevedore Cos., 435 U.S. 734 (1978), which upheld a general business gross receipts tax as applied to stevedoring companies. In the first place, Appellants have never claimed that their Worker's Identity System is a revenue-raising device or that the $10.00 fee is a tax. Indeed, they have stipulated that the registration fees "are kept by the franchisees [private persons who collect them]. None are paid to the Parish or Police Jury." Pre-trial Stip. 5(k), Record at 141. Even assuming arguendo that Appellants could now retract their stipulation that the system was devised for crime control rather than revenue-raising (Pre-trial Stip. 5(e), Record at 141), the Worker's Identity System would fail miserably under the test articulated in Department of Revenue. The Court there noted that it had only upheld those "taxes that are applied to activity with a substantial nexus with the State, that are fairly apportioned, that do not discriminate against interstate commerce, and that are fairly related to the services provided by the State." 435 U.S. at 750. (footnote cont'd)

Court of Appeals correctly found that this scheme unconstitutionally interferes with the free flow of labor, thereby causing injury to both employers and employees.[7] Indeed, the Commerce Clause

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(footnote 6 cont'd)
The $10.00 fee for each new worker under the St. Mary scheme does discriminate against interstate commerce, because it is imposed only on outsiders, and this fee is totally unrelated to services provided by the Parish, since neither the jobless registrants nor the employers who must pay it receive any benefit at all. See Deposition of Parish Identification Officer, at 4, Pl. Ex. F, Record at 328-29. Moreover, the $10.00 fee is clearly not a general tax of the type considered in Department of Revenue.

7. The Court of Appeals acted properly in reexamining the legal question of discrimination against commerce and weighing for itself the relative burdens and benefits imposed by the scheme. This Court has repeatedly found Commerce Clause violations and reversed trial court decisions for precisely these reasons. See, e.g., Hughes v. Oklahoma, 441 U.S. 322 (1979); Raymond Motor Transportation, Inc. v. Rice, supra; Great Atlantic & Pacific Tea Co. v. Cottrell, 424 U.S. 366 (1976).

was designed for the very purpose of preventing the economic isolation and Balkanization which would be created were other localities to adopt a comparable worker's identity and registration system.[8] As Justice Jackson noted:

> Our system, fostered by the Commerce Clause, is that every farmer and every craftsman shall be encouraged to produce by the certainty that he will have free

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8. The Court of Appeals was generous to Appellants by not including in its calculations the cumulative effects imposed on interstate commerce if other parishes and counties retaliated by adopting a comparable scheme. See Raymond Motor Transportation, Inc. v. Rice, supra; Katzenbach v. McClung, 379 U.S. 294 (1964); Bibb v. Navajo Freight, supra; Edwards v. California, supra. If other local governments imposed a $10.00 registration fee upon workers from outside their boundaries, it would create an inordinate cumulative burden both for migrant farmworkers with average annual incomes of $4,000, Record at 343-44, and for multistate and multinational corporations, such as oil and chemical companies, which must hire large numbers of employees in St. Mary Parish and throughout the nation.

> access to every market in the Nation, that no home embargoes will withhold his exports, and no foreign state will by customs duties or regulations exclude them. Likewise, every consumer may look to the free competition from every producing area in the Nation to protect him from exploitation by any. Such was the vision of the Founders; such has been the doctrine of this Court which has given it reality.

H.P. Hood & Sons, Inc. v. DuMond, 336 U.S. 525, 539 (1949). See also Baldwin v. G.A.F. Seelig, Inc., 294 U.S. 511, 523 (1935) ("The Constitution was framed under the dominion of a political philosophy less parochial in range.")

II. THE UNANIMOUS COURT OF APPEALS RULING WAS CONCLUSIVELY MANDATED BY THE WELL-ESTABLISHED COMMERCE CLAUSE JURISPRUDENCE OF THIS COURT.

The carefully reasoned opinion of the Court of Appeals for the Fifth Circuit followed closely the compelling precedents of this Court. There is, moreover, no reason to reconsider these

underlying precedents, which were recently decided by clear, strong majorities of this Court. See e.g., Hughes v. Oklahoma, 441 U.S. 322 (1979) (7-man majority, 2 in dissent); City of Philadephia v. New Jersey, 437 U.S. 617 (1978) (7-2); Raymond Motor Transportation, Inc. v. Rice, 434 U.S. 429 (1978) (4 concurring in the opinion of the Court, none dissenting); Hunt v. Washington Apple Advertising Commission, 432 U.S. 333 (1977) (unanimous vote by the 8 participating Justices); Great Atlantic & Pacific Tea Co. v. Cottrell, 424 U.S. 366 (1976) (unanimous vote by the 8 participating Justices); Pike v. Bruce Church, Inc., 397 U.S. 137 (1970)

(same).[9]

The three-pronged test developed in these cases requires a court to inquire--as the Fifth Circuit did--whether the challenged law discriminates against interstate commerce, what local benefits it actually provides, and whether non-discriminatory alternatives are available. The Fifth Circuit correctly concluded that Ordinance No. 837 discriminates by severely limiting access to the local labor market. It is undisputed that the scheme operates to restrict the desirable

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9. The other cases relied on by the Fifth Circuit were all older, well-established precedents. See Dean Milk Co. v. Madison, 340 U.S. 349 (1951); H.P. Hood & Sons, Inc. v. DuMond, supra; Toomer v. Witsell, 334 U.S. 385 (1948); Edwards v. California, supra; Baldwin v. G.A.F. Seelig, Inc., supra; Pennsylvania v. West Virginia, 262 U.S. 553 (1923).

St. Mary Parish labor market solely to residents of the Parish who are already employed there or who seek their first job there. Anyone else wishing to obtain a public or private job in St. Mary Parish must be willing both to pay a $10.00 penalty fee and to reveal personal information to an instrusive system[10] which is totally lacking in confidentiality safeguards.[11]

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10. The questionnaire employed by the Worker's Identity System requires a potential employee to reveal his or her race, sex, social security number, addresses for the last five years, names and addresses of relatives (father, mother, brothers, and sisters) spouse's address, driver's license number, and voter registration. For a copy of the questionnaire, see Record at 292 or J.S. at A-50, A-51.

11. There was undisputed testimony at trial that potential workers would refuse employment in St. Mary Parish rather than answer the questionnaire, which forced them to reveal personal information about themselves or their families--former residence in a mental institution or (footnote cont'd)

Unlike the market in abandoned cars, considered in Hughes v. Alexanderia Scrap, 426 U.S. 794 (1976), or in cement sales, considered in Reeves, Inc. v. Stake, 100 S. Ct. 2271 (1980), the St. Mary Parish labor market is neither created nor maintained by the State or the Parish. It is largely a private market in which private businesses, such as Appellee Service Machine & Ship-building, seek to hire workers from other states and nations, such as Appellee

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(footnote 11 cont'd)
prison, illegitimacy, cohabitation, and race. Record at 33-35, 340, 343, 353-55; Pl. Exs. O-Q., Record at 329-31. The system is particularly intimidating to sugar plantation workers seeking jobs for the first time in the industrial sector. Record at 300, 353-55. See 617 F.2d at 76. Moreover, neither the private franchisees who collect the information nor the Identity Officer who stores it have any qualifications or training in maintaining confidentiality. Pre-Trial Stips. 5(i), 5(n), Record at 141-42; Pl. Ex. F, at 2, 4, Record at 328-29.

Reubin and John Doe 1 (Pl. Ex. O; Record at 33-35, 328-29). Even Appellants concede that employers in the Parish are "penalized in relation to other competitors." J.S. at 14. Ordinance No. 837 is, therefore, just like the legislation invalidated by this Court in City of Philadelphia v. New Jersey, supra, which restricted the ability of private, in-state landfill operators to conduct business with out-of-state waste producers. See also Pike v. Bruce Church Inc., supra.[12]

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12. As Philadelphia and Pike demonstrate, Appellants are incorrect in their assertion that the Commerce Clause does not apply to burdens placed upon in-state businesses. The ordinance challenged here discriminates against both in-state employers and out-of-state employees--the two groups represented by Appellees.

Defendants-Appellants attempt to justify their discriminatory scheme before this Court just as they did in both courts below--by ritualistically repeating that Ordinance No. 837 was originally designed to prevent and deter crime. But "simply invoking the convenient apologetics of the police power," Kansas City Southern Railway v. Kaw Valley Drainage District, 233 U.S. 75, 79 (1914), is an inadequate defense to a Commerce Clause claim. This Court has repeatedly invalidated laws based on state and local interests every bit as important as crime control. Indeed, recent decisions have insisted that once discrimination against interstate commerce is shown, "the burden falls on the State to justify it both in terms of the local benefits flowing from the statute and the unavailability of

nondiscriminatory alternatives adequate to preserve the local interests at stake." Hunt v. Washington Apple Advertising Commission, supra, at 353 (consumer protection law found unnecessarily burdensome and too tenuously related to avowed purpose). See Hughes v. Oklahoma, supra, at 336 (rejecting conservation of wildlife as justification in light of less burdensome alternatives); Raymond Motor Transportation, Inc. v. Rice, supra, at 444-45 (finding highway safety an inadequate justification); Great Atlantic & Pacific Tea Co. v. Cottrell, supra, at 372-73 (rejecting public health and safety justifications). See also City of Philadelphia v. New Jersey, supra (invalidating law based on enviromental protection and public health); Toomer v. Witsell, 334 U.S. 385, 403-04 (1948)

(finding protection of local industry and of employment inadequate justifications).

Appellants' total inability to shoulder either portion of this burden is well described in the following passage from the Court of Appeals' opinion:

> The parish's claim that the ordinance will facilitate the detection and deterrence of crime is greatly undermined by the testimony of the parish's own fingerprint expert, who testified that most of the information obtained through the registration system was of no use to him, and that he had never received any information from the registrations. Plaintiff's Exh. G (Deposition of J. Garlotte at 4-5)....The burdens on interstate commerce are indeed weighty in relation to what some parish law enforcement officials conceded were the registration system's somewhat illusory benefits.

617 F.2d at 74-75, 76. The Court of Appeals further noted that the parish had

> made no showing of the unavailability of nondiscriminatory alternatives that would serve to protect the local

> interests in question. The testimony of one expert at trial indicated that persons between fifteen and nineteen commit a disproportionately large percentage of the crime. Record, vol. II, at 361. But under the ordinance's discriminatory registration scheme, local individuals that would most likely fall into this category would not be required to register, since many would be seeking their first jobs. It would appear that a nondiscriminatory registration scheme would better serve crime prevention and detection in the parish.

Id. at 75 (emphasis in original).

The record thus reveals obvious, substantial burdens upon interstate commerce and defendants' complete failure to prove actual local benefit or lack of less burdensome alternatives. This record has been reviewed by two unanimous Fifth Circuit panels, under the test articulated by the well-established precedents of this Court. There is, moreover, no conflict among the circuits.

Under these circumstances, nothing further would be gained by plenary review of the appeal by this Court.

III. ADDITIONAL SUBSTANTIAL CONSTITUTIONAL GROUNDS SUPPORT THE COURT OF APPEALS' DECISION.

Besides running afoul of the Commerce Clause, the statute and ordinance challenged here violate Plaintiffs-Appellees' rights of privacy, work, travel, due process, and equal protection. Given the obvious Commerce Clause violation, the Court of Appeals found it unnecessary to consider these other substantial constitutional claims. See 617 F.2d at 72. Should this Court disagree with the Fifth Circuit's careful analysis of the Commerce Clause claim, it would then become necessary for this

Court, or the Fifth Circuit, to rule upon these properly preserved and substantial constitutional claims. Thus, summary reversal would certainly be an inapproriate disposition of this case.

Even Appellants agree that the other claims would have to be considered. J. S., Question 2. They are, however, mistaken in believing that a lower level of judicial scrutiny would be required than was employed in the Commerce Clause context. In fact, since Ordinance No. 837 violates an constellation of fundamental constitutional rights, close judicial scrutiny would be essential.

Much of our strength as a free society rests upon a tripod composed of three fundamental rights--the right to work, the right to travel for the purpose of relocating, and the right of privacy. In cases implicating even one of these

interrelated rights, this Court has repeatedly insisted that the appropriate legal standard is strict scrutiny or, at the very least, intermediate scrutiny. See, e.g., Truax v. Raich, 239 U.S. 33 (1915) (fundamental right to work for a living); Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974) (fundamental right to travel for the purpose of relocating); Whalen v. Roe, 429 U.S. 589 (1977) (right to informational privacy). See also Delaware v. Prouse, 440 U.S. 648 (1979) (Fourth Amendment protection against unreasonable police identity check); Plante v. Gonzalez, 575 F.2d 1119, 1134 (5th Cir. 1978) (Wisdom, J.) (right to informational privacy), cert. denied, 439 U.S. 1129 (1979). The St. Mary Parish Worker's Identity System infringes upon each of these precious constitutional rights. It does so by

placing potential employees between the Scylla of being unable to obtain work in the Parish and the Charybdis of revealing personal information to a system totally lacking in safeguards against dissemination.

Were this Court, or any reviewing court, to examine the asserted purposes of this bizarre system in light of the evidence presented at trial, it would conclude that these purposes were not legitimate,[13] let alone compelling

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13. The goal of reducing "the rate of crime by deterring suspects who are wanted in other jurisdictions from moving into the Parish to work," Pre-trial Stip. 5(e), Record at 140-41, flies in the face of the numerous cases ruling that a state or locality may not isolate itself by screening out problems which will thereby be channeled into other states. See City of Philadelphia v. New Jersey, 437 U.S. 617 (1978) (Commerce Clause forbids keeping out garbage brought from adjoining states); Hicklin v. Orbeck, 437 U.S. 518 (1978) (Privileges and Immunities Clause forbids screening out (footnote cont'd)

state interests and that there was no rational, let alone substantial, relationship between these ends and the means chosen to effectuate them. Moreover, as noted above, the means chosen are certainly not the least restrictive ones.

(footnote 13 cont'd)
employees who compete with local laborers); Shapiro v. Thompson, 394 U.S. 618 (1969) (right to travel and Equal Protection violated by law limiting migration of welfare recipients); Edwards v. California, 314 U.S. 160 (1941) (right to travel and Commerce Clause violated by law attempting to screen out poor persons). This is an especially questionable goal to assert as the justification for a system that has the pratical effect of deterring honest persons seeking to earn a living while having little or no effect upon criminal activity. See Pl. Ex. H, at 6-8, 10; Record at 328-29, 359.

CONCLUSION

Following the clear dictates of this Court, the Court of Appeals for the Fifth Circuit correctly ruled that the St. Mary Parish Worker's Identity System violates the Commerce Clause. This unanimous ruling is not in conflict with the Commerce Clause decisions of any other court in the country. Indeed, the only aberrant opinion in this area of the law is that rendered by the trial court in the instant case, which gave short shrift to the Commerce Clause claim. 466 F. Supp. at 1208. That unprecedented opinion is, in fact, the only one which has ever validated a far-ranging identity system requiring the mass governmental questioning and fingerprinting of every new worker in <u>every</u> type of job throughout an entire geographic area.

That unfortunate error of law has now been corrected, first by the Fifth Circuit panel (Judges Clark, Gee, and Hill) which granted an injunction pending appeal and, more completely, by Judge Tjoflat's detailed opinion for another unanimous panel. 617 F.2d 70. This ruling accurately reflects both the clear Commerce Clause precedents of this Court and a proper balancing of the relevant policy considerations. For these reasons, Appellees urge this Court to affirm summarily.

Respectfully submitted,

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The assistance provided by Tom Gooding and Michael Magner is gratefully acknowledged.

CERTIFICATE OF SERVICE

I certify this _____ day of September, 1980, that I have served three copies of the foregoing Motion to Affirm upon Bernard E. Boudreaux, Jr., Bauer, Darnell, McNulty & Boudreaux, Post Office Box 565, Franklin, LA. 70538; Anthony J.

Guarisco, Jr. and Michael Aloise, Jr., 500 Roderick Street, Suite 26, Post Office Box 2727, Morgan City, LA. 70380; and Edward M. Leonard, Jr., Post Office Box 2779, Morgan City, LA. 70381, Attorneys for Appellants, by mailing same, postage prepaid addressed to them at their offices. I have also sent a copy to J. Marvin Montgomery, Jr., Esq., Assistant Attorney General, Post Office Box 44005, Baton Rouge, LA. 70804.
